

Default—Adversary Proceedings

Docketing Events

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Motion for Default Judgment

Negative Notice: N/A

Fee: N/A

Code and Rule References

[Fed. R. Bankr. P. 7004](#)

[Fed. R. Bankr. P. 7055](#)

[Fed. R. Civ. P. 54](#)

[Fed. R. Civ. P. 55](#)

[Local Rule 7055-2](#)

[Local Rule 9013-1](#)

[Admin. Order FLMB-2014-10](#)

Description

When a defendant, counter-defendant, or cross-defendant in an adversary proceeding fails to timely respond to a complaint, counterclaim, or crossclaim, they are in default. The plaintiff, counter-plaintiff, or cross-plaintiff may file a request to have the Clerk enter an Entry of Default and may file a Motion for Default Judgment.

Motion for Clerk's Entry of Default:

The process for reviewing and entering a Clerk's Entry of Default is a clerk's office function based entirely on the papers. A summons is issued when a complaint is filed. The summons notifies the defendant(s) that a response is required within a certain time limit. The summons states: "If you fail to respond to this summons, your failure will be deemed to be your consent to entry of a judgment by the bankruptcy court and judgment by default may be taken against you for the relief demanded in the complaint."

A motion for entry of default is filed when the defendant, counter-defendant, or cross-defendant has failed to timely respond. A party may request a default against one or more defendants in a multi-defendant complaint.

Note: The party can request a default without requesting a judgment by default. This is often seen if there are multiple defendants. The plaintiff may wish to receive a default as soon as possible on one defendant while pursuing action against the other defendants. The plaintiff later may request one judgment against all defendants.

Motion for Judgment by Default:

After the Clerk's Entry of Default, a Motion for Default Judgment may be filed and meet specific requirements.

Filing Checklist: Motion for Entry of Default

1. Review the motion to determine if it:
 - ☐ Is signed;
 - ☐ Is properly served and includes a proper certificate of service;
 - ☐ Attorney's name and address are complete and consistent with the filing attorney's name and address in CM/ECF;
 - ☐ Includes the following statements:
 - ☐ That service was duly effectuated in compliance with the Federal Rules of Bankruptcy Procedures;
 - ☐ That no extension of time was sought or obtained by the defendant;
 - ☐ That the defendant failed to file a responsive pleading or motion within the time specified; and
 - ☐ That the movant seeks an entry of default.
2. Review the docket to determine if the summons, Complaint, and Administrative Order FLMB 2014-10 were served.
3. Review the docket to determine that service of the summons was timely.
 - Service must occur within 7 days if within the United States.
 - ❖ **Note:** The 7-day requirement does not apply to service in a foreign country. Service requirements of parties in a foreign country are governed by Federal Rule of Civil Procedure 4.
4. Review service of the summons to determine that service is proper:
 - ☐ Individual (non-debtor) respondent at the individual's dwelling house or usual place of abode or to the place where the individual regularly conducts a business or profession (must be a physical address). Fed. R. Bankr. P. 7004(b)(1);
 - ☐ Infant or Incompetent Person. Fed. R. Bankr. P. 7004(b)(2);
 - ☐ Corporation, Partnership, LLC: To the Attention of an Officer, a Managing or General Agent, or to any other Agent Authorized by Appointment or by Law to Receive Service of Process. Fed. R. Bankr. P. 7004(b)(3);
 - ☐ United States Agency: service to the civil process clerk at the office of the United States Attorney for the district, the Attorney General for the United States, and the agency. Fed. R. Bankr. P. 7004(b)(4) and Fed. R. Bankr. P. 7004(b)(5);
 - ☐ State or Municipal Corporation or Agency: serve to the person or office prescribed to be served by the law of the state. Fed. R. Bankr. P. 7004(b)(6);
 - ☐ Debtor Defendant: service to the address of record on the bankruptcy case. It may be a physical or mailing address that was provided on the petition or at an address designated by the debtor in writing (meaning a change of address after the petition is filed). Fed. R. Bankr. P. 7004(b)(9);
 - ☐ Debtor Defendant: service to the attorney for the Debtor on the underlying bankruptcy case. Fed. R. Bankr. P. 7004(g);
 - ☐ Insured Depository Institution: service by certified mail addressed to the attention of an officer of the institution. Fed. R. Bankr. P. 7004(h); and
 - ☐ Insured Depository Institution: upon the attorney who has appeared on behalf of the institution. Fed. R. Bankr. P. 7004(h)(1).
5. Review the docket for the filing of an answer or other responsive pleading.
 - ☐ If no responsive pleading was filed, determine if the due date has expired.

- ❖ **Note:** The time for filing an answer or responsive pleading is 30 days from the summons service date. For governmental parties, the time is 35 days. These times may be extended by an order on motion of a party. The due date will be reflected in the Summons Issued entry.

Filing Checklist: Motion for Default Judgment

1. Review the motion to determine if it:
 - ☐ Is signed;
 - ☐ Is properly served and includes a proper certificate of service;
 - ☐ Attorney's name and address are complete and consistent with the filing attorney's name and address in CM/ECF;
 - ☐ Includes an attached affidavit in support of the allegations; and
 - ☐ Includes an affidavit of non-military service (if default is requested against an individual).
2. Verify that a Clerk's Entry of Default was issued.
3. Submit two orders:
 - ☐ Granting motion; and
 - ☐ Default judgment.

Forms

[Motion for Entry of Default by Clerk](#)

[Motion for Default Judgment](#)

[Affidavit in Support of Motion for Entry of Judgment by Default](#)

[Order Granting Motion for Final Judgment](#)

[Final Default Judgment](#)
